

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10296 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHANUBHAI DUDHABHAI MODEDARA

Versus

DISTRICT MAGISTRATE, JUNAGADH

Appearance:

MR PRAVIN GONDALIYA FOR MR YOGESH S LAKHANI
for Petitioner

MR MA BUKHARI AGP for Respondent No. 1, 4

MR BHARAT T RAO for Respondent No. 3

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 16/19/04/99

ORAL JUDGEMENT

1. This is a petition wherein the petitioner has challenged the order passed by the respondent-authority under section 3 of the Prevention of Black Marketing & Maintenance of Supply of Essential Commodities Act, 1980. The order of detention is dated 6th October, 1998 and the petitioner was taken in actual detention on 19th October,

1998.

2. Although the petitioner has raised a number of grounds in the petition, learned counsel for the petitioner has concentrated only on one ground, consequently I am inclined to deal with only that particular ground.

3. A specific ground has been raised in the petition at para I (i) that the petitioner had made a representation dated 10th November, 1998 through the Jail Superintendent, Vadodara, and had requested that the said representation be sent to all the concerned authorities namely (i) District Magistrate, Junagadh; (ii) Secretary, Food & Civil Supply Department, State of Gujarat; (iii) Secretary, Food & Civil Supply Department, Union of India and (iv) Secretary, Advisory Board (PBM) at Gandhinagar. The said representation has not been taken into consideration and has not been decided by the concerned authorities, if at all it has been considered, it has not been decided and if decided there is unexplained delay in taking the said decision. Furthermore, if the same has been decided, the authority has chosen not to communicate the same to the petitioner. In view of the said facts, it is contended that the impugned order of detention is liable to be quashed and set aside. A copy of the said representation has been annexed with the petition at Annexure:C, and the acknowledge receipt is also annexed to the petition at Annexure:D.

4. It is unfortunate that these averments made in the petition (after amendment) have gone undenied and undefended by the respondent.

5. As aforesaid, this ground was added to the original petition by an amendment carried out on 23rd February, 1999. The affidavit-in-reply filed by the District Magistrate, Junagadh is sworn on 4th February, 1999 i.e. prior to the amendment, and therefore obviously has not dealt with these contentions raised. No subsequent affidavit has been filed by the District Magistrate.

6. An affidavit sworn on 15th January, 1999 has been filed on behalf of Union of India namely respondent no. 3 herein, which for obvious reasons as aforesaid does not deal with the grounds added to the petition by way of amendment. However, the third respondent has also filed a subsequent affidavit-in-reply sworn on 12th March, 1999. This particular affidavit deals with the contentions raised in the petition only so far as the

allegations pertaining to the third respondent are concerned, as is normal and natural. However, the ground taken in para I(i) of the petition as stated hereinabove specifically pertains to non-consideration of the petitioner's representation at least by the District Magistrate, Junagadh and the Secretary, Food & Civil Supply Department, State of Gujarat, as also by other authorities. This second affidavit on behalf of the third respondent confines itself as to how the third respondent dealt with the representation made by the detainee. It does not deal with the allegations made in respect of non-consideration of the detainee's representation by the District Magistrate, Junagadh and Secretary, Food & Civil Supply Department, State of Gujarat. Therefore, the net result of the state of the record is that the averments made by the petitioner qua these two authorities have gone undenied and undefended both on the part of the District Magistrate as also the Secretary, Food & Civil Supply Department, State of Gujarat.

7. It may also be pointed out here that the Secretary, Food & Civil Supply Department, State of Gujarat is made second respondent in the present petition and yet no affidavit has been filed in reply to the petition by the said respondent.

8. In view of the aforesaid factual situation, I have no option to hold that the representation made by the detainee has been casually and indifferently dealt with, that there is non application of mind at least so far as these two authorities are concerned, and at least on this ground, the impugned order cannot be sustained.

9. It is by now well settled law that if the right to make effective representation which is available to the detainee is in any way abrogated or rendered illusory, the impugned order must be struck down.

10. I am also mindful of the fact that the petitioner was taken in actual detention on 19th October, 1998, and therefore the period of detention would expire on 19th April, 1999 i.e. on the next working day after today. I therefore see no point in giving any further opportunity to the respondent authorities to file affidavits at this very late stage of the matter merely in order to fill in the lacuna in the record.

11. This petition is accordingly allowed. The impugned order of detention is quashed and set aside.

The petitioner-detenué is directed to be released forthwith. Rule is accordingly made absolute with no order as to costs.

12. It is stated that the detenué is now transferred to Junagadh Jail and therefore, Writ may be issued to the Jail Superintendent, Junagadh Jail. It is so directed. Direct service permitted.

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